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H.R. 3132 — The Children's Safety Act of 2005

H.R. 3132, the Children's Safety Act, is scheduled to be considered on the House floor on Wednesday, September 14, 2005, subject to a modified open rule (<u>H. RES. 436</u>). Below are the summaries of the first 15 of 31 amendments made in order under the rule (preprinted in the Congressional Record). <u>Note</u>: summaries are based on RSC staff's review of actual amendment text. For a summary of the underlying bill, see a separate RSC document released earlier this morning.

- 1. Pence (R-IN): Inserts a new title at the end of the bill, similar text of H.R. 3726, which requires producers of pornography and sexually explicit photography to keep records of the names, ages, and proof of identification of the individuals depicted in their materials. According to the sponsor, this will "eliminate a loophole that allowed pornographers to use children in soft-core pornography and nude pictures but claim that they believed the children were over age eighteen." Subjects producers of obscenity to the same forfeiture provisions as are in place for other crimes and allows the equipment used by pornographers to be forfeited. Makes the production, transportation, distribution and sale of obscenity a crime when the producer has the intent to do so across state lines.
- **2. Nadler (D-NY):** Prohibits the sale or disposal of a firearm or ammunition to any person "convicted in any court of a misdemeanor sex offense against a minor. Prohibits sex offenders from shipping or transporting a firearm in interstate or foreign commerce, and from receiving or possessing a firearm or ammunition.
- 3. Porter (R-NV): Directs the Attorney General, upon a request from a governor of a state, to conduct fingerprint-based checks of the national crime information databases for individuals under consideration for employment in a local or state education agency in which the person would work with or around children; allows the information obtained to be released to authorized individuals only, and sets out criminal penalties for unlawfully using or releasing the information.
- **4. Scott (D-VA):** Strikes the mandatory minimum sentence of 10 years within Sec. 123 that the bill imposes on someone that uses a controlled substance to commit a sex offense; strikes portions of section 402 of the bill which increase the mandatory minimum sentences for a conviction of aggravated sexual abuse of a child and relating to material containing child

- pornography; strikes section 504 of the bill which increases penalties and prison sentences regarding coercion and enticement by sex offenders; strikes portions of section 512 which increase penalties and prison sentences for sex-trafficking of children offenses; strikes portions of section 513 which increase penalties for offenses regarding sexual abuse of wards.
- **5. Ryun (R-KS):** Inserts findings and a Sense of Congress regarding the 9th Circuit Court of Appeals case *U.S. v. Helder, Jr.*, in which the defendant was convicted of using a computer to entice an individual under the age of 18. However, District Judge Whipple acquitted the defendant because the defendant did not solicit an actual minor but an undercover law enforcement officer. The Sense of Congress states that the Department of Justice should appeal Judge Whipple's decision in the case and Judge Whipple's acquittal decision "should be overturned in light of the law as it is written, the intent of Congress, and well-established case law."
- **<u>6. Scott (D-VA)</u>:** Strikes section 303 of the bill, which imposes time limits and other specific limits on federal courts' review of habeas corpus petitions that challenge a state-court conviction for killing a child.
- **7. Scott (D-VA):** Strikes section 302 of the bill, which imposes various mandatory minimum prison sentences for persons convicted of a felony crime of violence against a person under 18 years old; strikes portions of Title IV, Section 402 of the bill, which increases penalties and prison sentences for sexual offenses against children.
- **8.** Wasserman Schultz (D-FL): Inserts a new section in the bill which makes grants to jurisdictions for the "purpose of establishing, enhancing, or operating effective civil commitment programs for sexually dangerous persons; sets out eligibility requirements and appropriates \$40 million for FY06-FY09 to carry out the grant program.
- **9.** Inglis (R-SC): Strikes sections of the bill which stipulate mandatory minimum prison sentences (not less than 5 years and not more than 20) for sex offenders who fail to register as such.
- 10. McDermott (D-WA): Directs States to make foster care maintenance payments on behalf of each child who is in foster care under the responsibility of the State, and who resides or, just before August 28, 2005, had resided in an area for which a major disaster has been declared. Additionally, the amendment waives current state matching requirements for federal foster care assistance. According to the sponsor, the amendment is meant to provide full federal funding for broad social services for children, including mental health treatment and family counseling. There is no cost estimate available for this amendment.
- <u>11. McDermott (D-WA):</u> According to his office, Congressman McDermott will not be offering this amendment.
- **12. Herger (R-CA):** Clarifies that for background checks only, may "appropriate officers of child welfare agencies" have online access to the national crime information databases. Changes are noted in red bold.

(b) LIMITATION.—An officer may use the authority under subsection (a) only in furtherance of the purposes of the agency and only on an individual relevant to casework of the agency for the purpose of conducting the background checks required under section 471(a)(20) of the Social Security Act

The amendment also slightly changes part of the definition for the term "child welfare agency." Changes are noted in red bold.

- (e) CHILD WELFARE AGENCY DEFINED.—In this section, the term "child welfare agency" means—
- (1) the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act; and (2) any other public agency, or any other private agency under contract with the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act, that is responsible for the placement of foster or adoptive children licensing or approval of foster or adoptive parents.
- **13. Flake (R-AZ):** Under the title of "Ensuring Fair and Expeditious Federal Collateral Review of Convections for Killing a Child," the amendment restricts a court, justice or judge's jurisdiction in considering an application with respect to an error relating to the applicant's sentence or sentencing that has been found to be harmless.

According to the sponsor, the amendment, "only limits the federal habeas review that begins in the lower federal courts after all state appeals and U.S. Supreme Court certiorari review are completed. Congress unquestionably has the authority to limit such review."

- **14. Baird (D-WA):** Directs the Attorney General, with the Secretary of Health and Human Services, "to study the establishment of a nationwide interstate tracking system of persons convicted of, or under investigation for, child abuse."
- **15. McDermott (D-WA):** According to his office, Congressman McDermott will not be offering this amendment.

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